



DISABILITY AND COMMUNICATION ACCESS BOARD

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INTERPRETIVE OPINION

Pursuant to §103-50, Hawaii Revised Statutes (HRS), all buildings and facilities constructed by, or on behalf of the State or any county, shall conform to the 2004 Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG) and amendments. In accordance to HRS §103-50 and Chapter 11-217, Hawaii Administrative Rules, the Disability and Communication Access Board has authority to issue interpretive opinions to HRS §103-50 design standards.

Docket: **DCAB 2011-17:**

- 1) Must new construction of jails, prisons, and other detention and correctional facilities provide accessible mobility features complying with section 807.2 for a minimum of 3%, but not less than one, of the total number of cells in a facility?**
- 2) Must alterations to jails, prisons, and other detention and correctional facilities provide accessible mobility features complying with section 807.2 for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with section 807.2?**

Summary: The Department of Justice (DOJ) has modified the scoping requirements for detention and correctional facilities from those required in the 2004 ADAAG.

The DOJ in their Title II regulations has explained their reason for the change in scoping:

“Based on complaints received by the Department, investigations, and compliance reviews of jails, prisons, and other detention and correctional facilities, the Department has determined that many detention and correctional facilities do not have enough accessible cells, toilets, and shower facilities to meet the needs of their inmates with mobility disabilities and some do not have any at all. Inmates are sometimes housed in medical units or infirmaries separate from the general population simply because there are no accessible cells. In addition, some inmates have alleged that they are housed at a more restrictive classification level simply because no accessible housing exists at the appropriate classification level.

The Department believes that the unmet demand for accessible cells is also due to the changing demographics of the inmate population. With thousands of prisoners serving life sentences without eligibility for parole, prisoners are aging, and the prison population of individuals with disabilities and elderly individuals is growing.

The Department notes that inmates are typically housed in separate areas of detention and correctional facilities based on a number of factors, including their classification level. In many instances, detention and correctional facilities have housed inmates in inaccessible cells, even though accessible cells were available elsewhere in the facility, because there were no cells in the areas where they needed to be housed, such as in administrative or disciplinary segregation, the women’s section of the facility, or in a particular security classification area.”

State and County Facilities subject to HRS §103-50 are enforced by the Department of Justice (DOJ) and must comply with their 2010 Standards and regulations addressing Title II. Projects that do not comply with the supplemental requirements for Title II facilities with regards to scoping for cells with mobility features will not be in compliance with the DOJ Title II regulations.

Ruling: For buildings or facilities subject to HRS §103-50,

ADAAG 232 Detention & Correctional Facilities

Detention and correctional facilities shall comply with the following:

- 1) New construction of jails, prisons, and other detention and correctional facilities shall provide accessible mobility features complying with section 807.2 for a minimum of 3%, but not less than one, of the total number of cells in a facility. Cells with mobility features shall be provided in each classification level.
- 2) Alterations to jails, prisons, and other detention and correctional facilities shall provide accessible mobility features complying with section 807.2 for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with section 807.2. Altered cells with mobility features shall be provided in each classification level. However, when alterations are made to specific cells, detention and correctional facility operators may satisfy their obligation to provide the required number of cells with mobility features by providing the required mobility features in substitute cells (cells other than those where alterations are originally planned), provided that each substitute cell—
 - (i) Is located within the same prison site;
 - (ii) Is integrated with other cells to the maximum extent feasible;
 - (iii) Has, at a minimum, equal physical access as the altered cells to areas used by inmates or detainees for visitation, dining, recreation, educational programs, medical services, work programs, religious services, and participation in other programs that the facility offers to inmates or detainees; and
 - (iv) If it is technically infeasible to locate a substitute cell within the same prison site, a substitute cell must be provided at another prison site within the corrections system.

[Rul: 01/03/2011] (Auth and Imp: HRS §103-50)

If you have any questions or comments regarding this ruling, please call us at 586-8121.

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